IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2745 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

FIROZKHAN NAJIRKHAN PATHAN

Versus

DISTRICT MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner

MR KT DAVE, AGP, for Respondents

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 02/05/2000

ORAL JUDGEMENT

1. District Magistrate, Panchmahals, at Godhra, passed an order on August 31, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner-Firozkhan Najirkhan Pathan, under the provisions of the said Act.

2. The detaining authority took into consideration four offences registered against the petitioner, so also the statements of three anonymous witnesses. The detaining authority considered the activities of the detenu and observed that the detenu is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Ms. Kachhavah, learned advocate appearing for the petitioner, has restricted her arguments to the ground that there is improper exercise of powers under Section 9(2) of the PASA Act. She has drawn attention of this Court to the fact that the statements of anonymous witnesses were recorded on August 22, 1999 and the same were verified by the Dy.S.P. on August 24, 1999 and the Sub-Divisional Magistrate on August 30, 1999. The detaining authority, therefore, had not undertaken the exercise of verifying the correctness and genuineness of the fear expressed by the witnesses qua the detenu. But the detaining authority has relied upon the verifications made by the said officers and has exercised powers under Section 9(2) of the PASA Act. Ms. Kachhavah submitted further that the offences registered against the detenu do not indicate any disturbance to public order and, therefore, the subjective satisfaction recorded by the detaining authority regarding the activities of the detenu being detrimental to public order is without any basis and the petition mays, therefore, be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition.

5. Considering rival side contentions, it appears that the statements of anonymous witnesses have been recorded on August 22, 1999. The same have been verified by the Dy.S.P. on August 24, 2999 and the Sub-Divisional Magistrate on August 30, 1999 and the order is passed on August 31, 1999. It may be noted that the detaining authority has verified the statements of anonymous witnesses personally. But the detaining authority has relied upon the verification made by the aforesaid officers and has exercised the powers under Section 9(2) of the PASA Act. A perusal of the statements, particularly, the verification part by the Sub-Divisional Magistrate, indicates that they clearly reveal the name

and address of the witness giving the statement. As such, there is no secrecy left to the statement. Despite this, the detaining authority has recorded a subjective satisfaction for the need for exercising powers under Section 9(2), reflecting non-application of mind to the case. The entire decision making process would be vitiated and the petition deserves to be allowed on this ground alone.

6. Adverting to the offences registered against the detenu, a perusal of the First Information Report and the other relevant documents supplied to the detenu makes it abundantly clear that each of the case is of an individual character and there was no disturbance to public order. All that was involved was a law and order situation. Resultantly, the satisfaction arrived at by the detaining authority about the activities of the detenu being detrimental to public order is without any basis. Neither the statements nor the registered offences an be accepted to form the basis of this satisfaction.

7. In view of the above discussion, the reliance placed on by the detaining authority on the statements of anonymous witnesses and the registered offences cannot be upheld. The order of detention as well as the continued detention both are rendered bad in law. The petition, therefore, deserves to be allowed.

7. In the result, the petition is allowed. The impugned order of detention dated August 31, 1999, passed against the detenu is hereby quashed. The detenu-Firozkhan Najirkhan Pathan is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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